



September 1, 2020

Members of the House Health Policy Committee:

The Michigan Pharmacists Association (MPA) would like to thank Chairman Vaupel and members of the House Health Policy Committee for allowing us to provide our comments on this package of legislation, especially House Bill 5938. MPA represents pharmacists, pharmacy technicians and student pharmacists practicing in independent, chain, hospital, specialty home infusion and other pharmacy settings throughout the state of Michigan.

While this package of bills makes many positive changes in the healthcare world, it does not solve all of the issues facing pharmacy today. One major change needed is transparency and HB 5938 addresses the need for transparency. HB 5938 will require pharmacy benefit managers (PBMs) to become licensed in order to operate in the state. Michigan is one of 17 states that does not have a law that regulates the activities of PBMs and we hope that this committee will take the first steps to change this statistic.

As MPA presented to this committee last year, PBMs have been around for many years, and they act as the middleman between the insurance company and the pharmacy. When PBMs were set up back in the 1990's their intention was good. They created the connectivity that was needed at the time. The PBMs would adjudicate claims and distribute funds back to the pharmacy based off their contract with the health insurer. However, over time the actions of PBMs have become something that is feared by many pharmacists and in the opinions of many, do more harm than good. The actions of the PBMs do not just impact the pharmacist, but they also have a direct impact on the patient, prescriber, and the employer paying the bill, which for Medicaid, means the taxpayers of Michigan.

A 2019 MPA-commissioned study showed that PBMs had been overcharging the state \$64 million through their spread pricing tactics. When MPA brought up this issue to both the Michigan Department of Health and Human Services (MDHHS) and the Department of Insurance and Financial Services (DIFS) neither were able to take action because PBMs are not licensed in the state of Michigan. While spread pricing has since been banned in Michigan for Medicaid plans, private insurers are still susceptible to this practice which is why the licensing of PBMs is still needed: The state needs to have oversight of these companies to ensure all Michiganders are protected and treated fairly. HB 5938 requires that any spread pricing is reported to the department and it is our hope this bill will end the practice of spread pricing in the state.

Patients want choice and HB 5938 allows for it. Currently, patient choice is irrelevant to PBMs. It is common practice for PBMs to determine a local pharmacy that patients have been using since childhood is no longer in their network. Many times they force a patient to use a pharmacy that is 20 to 30 miles away or require the patient to use a mail order pharmacy that is frequently PBM-owned. On a weekly basis, MPA receives complaints and criticisms from pharmacists and patients regarding this issue. HB 5938 will ban PBMs from "steering" patients to the pharmacies they own and operate.

Instead, HB 5938 will allow for parity between PBM-owned pharmacies and other independently and chain owned pharmacies. This change will allow pharmacies to offer the same services currently promoted by the PBMs at the PBM-owned pharmacies but not allowed by other pharmacies in the network. These include refill limitations, medication quantity and lower copays. Not only does this help the pharmacy, but it is beneficial to the patient as well. Many patients have a personal relationship with their pharmacist and choose to use them for a multitude of reasons. A pharmacist is more accessible than a doctor and is able to help triage a medical issue. The bill will ensure that all pharmacies have the opportunity to be treated equally no matter what name is on the pharmacy, or who owns it.

Less than two years ago many PBM contracts specifically prohibited the pharmacist from disclosing to a patient any potential savings they may receive if they paid cash for their prescription or that a different medication that treats their condition could save the patient money. These pharmacist gag clauses were put into pharmacy contracts by the PBMs and assured that the pharmacist would not be able to identify alternative ways to have lower prescription costs. Thankfully, in October of 2018 Congress passed the law that bans these gag clauses, and HB 5938 just reiterates what the federal government has already done.

HB 5941 protects 340B entities. These entities are primarily based in rural areas and serve lower income patients. These entities are the primary form of health care to many in the communities they serve. This bill will require that PBMs cannot reimburse these 340B pharmacies less than the cost of the drug. Additionally, the PBM cannot penalize the 340B pharmacy or exclude them from their network because they are not owned by the PBM.

MPA looks forward to working with the sponsors of these bills and again would like to thank the Chairman and members of the House Health Policy Committee for the opportunity to provide public comment on this very important issue.

Sincerely,

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CEO